he should take possession of the rubber as evidence, and any resistance offered by Kim Khee would have amounted to voluntary obstruction of a public servant in the discharge of his duty as such public servant. There was, however, not a scrap of evidence that the constable had exercised his lawful powers of arrest before he endeavoured to take possession of the rubber. In my view a formal arrest was in this type of case a condition precedent to seizure of property regarding which any offence was thought to have been committed, and prior to such arrest Kim Khee committed no offence if he merely resisted persuasion or offered obstruction to an irregular and improper exercise by the constable of his powers. I would accordingly deal with the matter as on revision under section 325 of the Criminal Procedure Code, and quash the conviction and sentence. I direct that the fine be repaid to Lee Kim Khee.

Conviction and sentence quashed.

DENNIS v. SENNYAH

[O.C.J. (Hepworth J.) January 16, 1963]

[Penang — Civil Suit No. 224 of 1961]

Contract — Breach of promise of marriage — Assessment of general and special damages — Principles to be applied.

Damages — Breach of promise of marriage — Assessment — Court's discretion.

The plaintiff, the daughter of a Marine Department clerk became engaged to be married to the defendant, a Revenue Officer in the Customs Department at Johore Bahru on December 12, 1959. On May 28, 1960 it was agreed between the plaintiff and the defendant that the marriage should take place on August 20, 1960. On August 10, 1960 the defendant broke off the engagement and refused to marry the plaintiff. The plaintiff now sued the defendant for damages for breach of promise to marry and special damages for expenses incurred thereby.

Held: that damages in an action for breach of promise of marriage are almost entirely in the discretion of the Court. They may be of a vindictive and uncertain kind, not merely to repay the plaintiff for temporal loss but to punish the defendant in an exemplary manner. While in aggravating circumstances the damages may be at large, they should not be fixed as though they were a fine. In assessing damages the injury to the affections of the plaintiff, the prejudice to his or her future life and prospects of marriage, the rank and condition of the parties and the defendant's means are all matters to be taken into consideration. Applying the above principles the sum of $1,500 was awarded as general damages and $620.10 as special damages.

CIVIL SUIT.

Jag-Jit Singh for the plaintiff.

T. Subbiah for the defendant.

Hepworth J.: This is an action for damages for breach of promise of marriage. The plaintiff is the daughter, now aged 22, of one Clement Christopher Dennis, who is a clerk in the Marine Department, Penang. The defendant is a Revenue Officer in the Customs Department stationed at Johore Bahru.

On the 12th December, 1959, the plaintiff and the defendant became engaged to be married. On the 28th May, 1960, it was agreed between the plaintiff and the defendant that the marriage should take place in Penang on the 20th August, 1960. On or about the 10th August, 1960, the defendant broke off the engagement and refused to marry the plaintiff.

The plaintiff complains that as a result of the breach by the defendant of his promise to marry her she has endured humiliation and mental anguish and has been put to expense and has suffered damage. She therefore claims general damages for breach of promise of marriage and special damages in the sum of $870.10, particulars of which are set out in the statement of claim.

At the hearing the defendant admitted liability and accordingly the court is only called upon to assess the damages.

The damages in an action for breach of promise of marriage are not measured by any fixed standard and are almost entirely in the discretion of the court. They may be of a vindictive and uncertain kind, not merely to repay the plaintiff for temporal loss but to punish the defendant in an exemplary manner. No measure of damages can be laid down, save that, while in aggravating circumstances the damages may be at large, they should not be fixed as though they were a fine. In assessing damages the injury to the affections of the plaintiff, the prejudice to his or her future life and prospects of marriage, the rank and condition of the parties and the defendant's means are all matters to be taken into consideration. The conduct of the parties may properly be considered in aggravation or mitigation of the damages. (*Halsbury's Laws of England*, 3rd edition, Volume 19, page 773, paragraph 1235).

Damages in respect of specific monetary loss sustained by the plaintiff and naturally resulting from the breach may be recovered if specially claimed.

Documentary evidence in support of the claim for special damage was not forthcoming, except in the case of two small items. In the first item of special damage a sum of $150 was included for saris. As an engagement sari was given to the plaintiff by the defendant's brother (P.W.2), it does not seem to me that there was any necessity for this expenditure. As regards the amount claimed for food in item (1), whereas the father of the plaintiff stated that the total was $200, the brother of the defendant (P.W.2), who was called by the plaintiff, assessed it at a rough estimate at $100. Similarly, with regard to item (2) a sum of $150 claimed by the plaintiff was assessed by P.W.2 at $50. I think that an allowance of $150 for food in item (1) and $100 for food in item (2) will be fair. Allowing items 3, 4, 5 and 6 of the special damage in full I assess the special damage at $620.10.

As regards general damage there were no aggravating circumstances, such as an allegation of seduction having relied on the promise of marriage, and accordingly the general damage must be based on the humiliation and anguish which the plaintiff must necessarily have suffered as a result of the events which have taken place. This is a very difficult item to assess but must, I think, have some relation to the other matters to which I have referred above.

I think that there will have been little prejudice to the plaintiff's future life and prospects of marriage. It must, however, be borne in mind that she is now 22, whereas at the time when these events occurred she was only 19 or 20 and that she has accordingly lost those two years. She is, however, still young and her future prospects have not otherwise been marred as it will now be clear that the failure of the marriage was through no fault of hers.

The plaintiff's father is, as I have already said, a clerk in the Marine Department, Penang, aged 48, and he earns about $500 per mensem. He has 11 children, of whom the plaintiff is one. The defendant is a Revenue Officer in the Customs Department earning about $244 per month.

Taking all these matters into consideration I think that general damages amounting to $1,500 will be appropriate in this case.

There is one other matter to which I must refer. The plaintiff's father received $500 and this sum was received by him on behalf of the plaintiff. This sum was paid in respect of expenses arising out of the engagement and intended marriage of the plaintiff and the defendant. I think that the plaintiff must give credit to the defendant for this sum of money.

I accordingly give judgment for the plaintiff for $1,500 general damages and $620.10 special damages (less the amount of $500 already received) and costs.

Judgment for the plaintiff.

Solicitors: *Jag-Jit Singh; Natha Singh & Subbiah.*

CHOP CHUAH SEONG JOO v. TEH CHOOI NAI & ORS.

[O.C.J. (Hepworth J.) January 18, 1963]

[Penang — Civil Suit No. 181 of 1962]

Landlord and Tenant — Application for Certificate under Control of Rent Ordinance, 1956, s.12(1)(m) — Board's "order" containing ultra vires condition — Whether Board's "order" is a "decision" appealable on a point of law — Control of Rent Ordinance, 1956, s.11.

Certiorari — Whether remedy available to quash "decision".

Declaration — Whether remedy applies if there is right of appeal — Principles applicable.

The plaintiffs were tenants of the defendants in respect of rent controlled premises. On September 13, 1961 the defendants applied to the Rent Assessment Board for a certificate that it was in the interest of the public that the defendants be permitted to demolish the premises for the purposes of rebuilding. The Board made an order to such effect and ordered the plaintiffs to vacate the premises. On December 20, 1961 the plaintiffs filed a notice of appeal under the provisions of section 11 of the Ordinance, which appeal was not proceeded with. On June 26, 1962 the plaintiffs issued the present writ for a declaration that the whole of the order made by the Board was invalid.

Held: (1) the "order" here was the formal expression of a decision of the Board and therefore was appealable under section 11 of the Control of Rent Ordinance;

(2) since an adequate alternative remedy was available to the plaintiffs, a declaration should not be granted.

Cases referred to:—

(1) *Teh Say Mooi* v. *Tan Chor Leng* [1950] M.L.J. 90.

(2) *Sin Hock Ann* v. *Goh Siew Chiang* [1949] M.L.J. 62.

(3) *Foong Kooi* v. *Wong Ching* [1950] M.L.J. 159.

(4) *Badat bin Drani* v. *Tan Kheat* [1953] M.L.J. 67.

(5) *Barnard* v. *National Dock Labour Board* [1953] 2 Q.B. 18.

(6) *Francis* v. *Yiewsley* [1957] 2 Q.B. 136.

(7) *Kannappa Chettiar* v. *Letchu-Manan Chettiar* [1952] M.L.J. 188 at p. 189.

(8) *Vine* v. *National Dock Labour Board* [1956] 1 All E.R. 1 at page 13.

CIVIL SUIT.

Ng Ek Teong for the plaintiffs.

C. O. Lim for the defendants.

Cur. Adv. Vult.

Hepworth J.: The plaintiffs are a firm carrying on business at premises No. 143, Cheok Sah Place, Bukit Mertajam, Province Wellesley, of which they are the tenants. The defendants are the owners of the said premises No. 143, Cheok Sah Place and are the landlords of the plaintiffs. The plaintiffs are praying for a declaration that the whole of an order made by the Rent Assessment Board, Province Wellesley, in application No. 2 of 1961 dated the 11th December, 1961, relating to the said premises No. 143, Cheok Sah Place is invalid.

The somewhat curious history of this matter is as follows On the 13th September, 1961, the defendants as owners of the said premises and landlords of the plaintiffs applied to the Rent Assessment Board, Province Wellesley, (hereinafter referred to as the Board) in application No. 2 of 1961, for a certificate in terms of section 12(1)(m) of the Control of Rent Ordinance, 1956, (hereinafter referred to as the 1956 Ordinance) in respect of the said premises. The Board heard the parties on the 10th November, 1961, and on the 11th December, 1961, issued a document in the following terms:—

"Rent Assessment Board, Province Wellesley.
Area of District Council, Central Province Wellesley.
Control of Rent Ordinance, 1956.
Application No. 2 of 1961.

Between

1. Teh Chooi Nai
2. Lily Heah (m.w.)